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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,496	02/06/2004	Victor S. Chan	CA920030046US1	6631

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IBM CORP. (WSM)
c/o WINSTEAD SECHREST & MINICK P.C.
P.O. BOX 50784
DALLAS, TX 75201

EXAMINER	
POUNCIL, DARNELL A	

ART UNIT	PAPER NUMBER
3688	

MAIL DATE	DELIVERY MODE
10/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/773,496	CHAN ET AL.	
	Examiner	Art Unit	
	DARNELL POUNCIL	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 July 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 22* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office Action is in response to the Amendment filed on March 12, 2008. The Amendment cancelled Claims 8- 21 and added claim 22. Therefore, the currently pending claims considered below are Claims 1-7 and 22.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Westrope (WO 01/29716 A2).

Claims 1 Westrope discloses a system, method, and program for managing content on a virtual store, comprising:

a. creating a template (presentation layout templates) upon which store web page displays are formatted (page 9, lines 1-14);

b. designating one or more e-marketing spots in the hosted stores (media outlets) (page 9, lines 1-14);

c. setting up a marketing campaign for the stores (page 8, lines 15-30 and page 10, lines 12-13); and

d. creating one or more campaign initiatives (e.g. start/end dates and times) for the content to be displayed in the stores (page 10, lines 17-31).

Claim 2: Westrope discloses a system, method, and program as in Claim 1 above, and further discloses creating local campaign initiatives for content to be displayed in the e-marketing spots of the stores (page 16, lines 23-30).

Claim 3: Westrope discloses a program and method as in Claim 2 above, and further discloses modifying the local campaign initiatives in the store (page 15, lines 9-13).

Claims 4 Westrope disclose a system, method, and program as in Claims 2, above, and further discloses scheduling a time duration (start/end dates and times) for the content display (page 10, lines 20-31).

Claims 7: Westrope discloses a program and method as in Claims 1 above, and further discloses modifying the campaign initiatives in the store (page 12, lines 6-24 and page 15, lines 9-13).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 5, 6, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Westrope (WO 2001/29716 A2) in view of Ozer et al (7,136,871).

Claims 5: Westrope discloses a system, method and program as in Claim 4 above, and further implies checking for schedule conflicts between the campaign initiatives by displaying a campaign docket summary in calendar form which the media licensees (stores) and creator (advertiser) use to design and modify their campaigns (page 11, line 18 - page 12, line 24). Ozer discloses a similar system, method, and program for managing marketing campaigns in which several techniques are disclosed for conflict resolution between a plurality of advertisements within a marketing campaign (column 3, lines 49-57; column 5, lines 61-67; and column 17, lines 34-44). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Westrope to use one or more of these techniques to determine and resolve scheduling conflicts between the various local and national marketing campaigns shown on the campaign docket summary. One would have been motivated to check for and to

resolve such conflicts in order to allow the completion within the designated contractual agreements of the marketing campaigns.

Claims 6: Westrope and Ozer disclose a program and method as in Claim 5 above, and Ozer further discloses the "local advertisements will be treated as committed advertisements and given absolute weightings, while the national and default advertisements will be used as flexible advertisements, which are given relative weightings" (column 29, lines 42-53). In one embodiment, Ozer discloses first scheduling the committed advertisements; then, if all the time slots are not taken, filling the remaining time slots with the flexible advertisements (column 28, line 58 – column 29, line 8). However, Ozer also discloses that the national advertiser could also set up the national advertisements as committed advertisements. Additionally, the Examiner notes that the decision of which advertisement (campaign initiative) would have priority would be up to the operator of the system. If only one advertisement could be shown, then the operator would have two choices - show the local advertisement or show the other advertisement. Official Notice is taken that such decisions are old and well known within the advertising arts. For example, for at least several decades, local television stations have routinely substituted local advertisement spots for nationally broadcast advertisements. They have also routinely substituted regional or national public alert messages in place of local advertisements/programs. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for the operator in Westrope to select the (national) campaign initiative over the local campaign

initiative. One would have been motivated to choose the national campaign initiative over the local campaign initiative in order to allow the store to receive the monetary compensation from the national advertiser and to meet its contractual obligations.

Claim 22: Westrope discloses a method of:

accessing a list of pre-defined e-marketing spots for a profile store;

creating an e-marketing spot for said profile store by selecting said e-marketing spot from said list of pre-defined e-marketing spots; (pages 6, lines 14-30 and pages 9, lines 1-14);

accessing a first list of pre-defined campaign initiatives for said profile store;

creating a campaign initiative for said profile store by selecting said campaign - initiative from said first list of campaign initiatives (page 8, lines 15-30 and pages 9, lines 1-14);

accessing a second list of campaign initiatives for a hosted store; creating a campaign initiative for said hosted store by selecting said campaign initiative from said second list of campaign initiatives (page 8, lines 15-30 and pages 9, lines 1-14);

selecting said e-marketing spot created for said profile store to an e-marketing spot in said hosted store; (pages 9, lines 1-14);

scheduling said campaign initiative created for said profile store to said e-marketing spot in said hosted store; (page 10, lines 17-31); and

scheduling said campaign initiative created for said hosted store to said e-marketing spot in said hosted store; (page 10, lines 17-31).

Westrope does not explicitly disclose rejecting said scheduling of said campaign initiative created for said hosted store if there is a conflict between said campaign initiative created for said profile store and said campaign initiative created for said hosted store.

However Oser teaches rejecting said scheduling of said campaign initiative created for said hosted store if there is a conflict between said campaign initiative created for said profile store and said campaign initiative created for said hosted store. (column 3, lines 49-57; column 5, lines 61-67; and column 17, lines 34-44).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made for Westrope to use one or more of these techniques to determine and resolve scheduling conflicts between campaign initiative created for said profile store and said campaign initiative created for said hosted store.

Response to Arguments

6. Applicant's arguments filed July 23, 2008 have been fully considered but they are not persuasive.

In response to applicant's arguments, the applicant states, there is no language in Westrope that discloses virtual stores being stored in databases managed by a database management system in a resource manager, nor is there any discussion in Westrope of a graphical user interface being operatively connected to an application server having a business logic module to select the content to be displayed. The Examiner notes that these features have not been given patentable weight because

their recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Regarding the argument that the references applied in the prior art rejections fail to use the same names for certain elements as the names used by applicant (e.g., "profile store, "in the hosted stores", "in the profile store for the content to be displayed in the hosted stores", "displayed in the e-marketing spots of the hosted stores"), the argument is irrelevant, as it is noted that the disclosure in a reference must show the claimed elements arranged in the same manner as in the claims, but need not be in the identical words as used in the claims in order to be anticipatory. See *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

Additionally, note that during patent examination the pending claims must be interpreted as broadly as their terms reasonably allow. See *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

The applicant argues that the system disclosed by Westrope fails to disclose, "creating a profile store and creating a profile store which serves as a template and upon which the hosted stores are formatted." The examiner notes that on page 9 lines 1-14 Westrope discloses, "...presentation layout templates allow the creator to design multiple interactive advertisements quickly and efficiently." The templates (presentation

layout templates) are templates used to sell a product. Page 6, lines 1-16 discloses, "as the owner enters filtering criteria into the system via the response fulfillment campaign interface, the system provides a list of potential media licensees meeting the chosen criteria. The media licensee list preferably contains information, such as the name, category, format and target audience, that would help the creator select an appropriate media outlet." The profile store which are templates as the applicant has stated above are created and then assigned to the appropriate media outlet, the media outlet serves as a "hosted store."

The applicant also argues that the system disclosed by Westrope fails to disclose designating one or more e-marketing spots in the hosted stores. The examiner notes that Westrope discloses on page 9, lines 1-14, "Note that different docket templates may be required if the response fulfillment campaign uses different creative content for different advertisements (e. g., different media outlets having different creative requirements) or if the response options offered are different for different media licensees participating in the same response fulfillment campaign." Different advertisements would be considered one or more e-marketing spots, also the media outlets are the equivalent of hosted stores.

The applicant also argues that the system disclosed by Westrope fails to disclose setting up a marketing campaign for the hosted stores. Examiner notes that Westrope discloses on page 8, lines 15-30, where he discusses creating the campaign (e.g. "...docket template includes the campaign information entered by the creator...") and on

page 10, lines 12-13 it is disclosed the campaign dockets are assigned to a media license(e. g. hosted store).

The applicant also argues that the system disclosed by Westrope fails to disclose creating one or more campaign initiatives in the profile store for the content to be displayed in the hosted stores. The examiner notes that Westrope discloses as stated on page 9 of the remarks submitted, that Westrope discloses that the campaign docket includes editable fields to change the frequency, placement, and insertion of advertisement in the selected media outlet. The examiner notes that the campaign docket is the equivalent of campaign initiatives. Also, on page 10 lines 17-31, "...advertisement will appear through a given media licensee..." The examiner notes that appearing through a given media licensee, would also be the equivalent of the content being displayed in a hosted store.

The applicant also argues that the system disclosed by Westrope fails to disclose creating one or more local campaign initiatives for the content to be displayed in the e-marketing spots of the hosted stores. The examiner notes that Westrope discloses as stated on page 10 of the remarks submitted, that Westrope discloses a media licensee (owner of hosted store) may choose to create and independent docket (campaign initiative) if it is advertising (e-marketing spots) its own products. The examiner notes that the media licensee would be the equivalent to the hosted store, the campaign docket is the equivalent of campaign initiatives, and advertisings are equivalent to e-marketing spots.

The applicant also argues that the system disclosed by Westrope fails to disclose modifying the local campaign initiatives (docket template) in the hosted stores. The examiner notes that page 15, lines 9-13 as stated on page 11 of the remarks submitted, that Westrope discloses that "...the created can modify any field in the docket template..."

The applicant also argues that the system disclosed by Westrope fails to disclose scheduling a time duration for the content to be displayed in the e-marketing spots of the hosted stores. The examiner notes that Westrope discloses "...editable fields to change the frequency...in a selected media outlet..." The examiner equates the ability to change the frequency as being able to schedule a time duration and as stated earlier a media outlet is equivalent to a hosted store.

The applicant has attempted to traverse the Official Notices taken within the rejections. However, the applicant has not presented persuasive arguments as to why the noted facts were not well known, but merely requested documentary evidence of the features. It has been established that "Bald statements such as: "the examiner has not provided proof that this element is well known" or "applicant disagrees with the examiner's taking of Official Notice and hereby requests evidence in support thereof", are not adequate and do not shift the burden to the examiner to provide evidence in support of Official Notice. Allowing such statement to challenge Official Notice would effectively destroy any incentive on the part of the examiner to use the process of establishing a rejection of notoriously well known facts." *In re Boon, 169 USPQ 231*

(CCPA 1971). Thus, the applicant has not successfully traversed the Officially Noted facts.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DARNELL POUNCIL whose telephone number is (571)270-3509. The examiner can normally be reached on Monday to Thursday 8 to 5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on (571)272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. P./
Examiner, Art Unit 3688
October 1, 2008

/James W Myhre/
Supervisory Patent Examiner, Art Unit 3688